

CITY OF MORGAN HILL
REGULAR REDEVELOPMENT AGENCY AND
SPECIAL CITY COUNCIL MEETING
MINUTES - FEBRUARY 23, 2000

Chairperson/Mayor Kennedy called the Special Meeting to order at 7:02 p.m.

ROLL CALL

Present: City Council/Agency Members Chang, Cook, Sellers, Tate, and Chairperson/Mayor Kennedy

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

PUBLIC COMMENTS

Chairman/Mayor Kennedy opened the floor to public comment. Mrs. Gill, six year Morgan Hill resident, expressed concern with the lack of medical services in Morgan Hill due to the closure of the St. Louise Hospital facility. If promises and/or commitments were made by Saint Louise Hospital when the hospital was approved, she requested that the commitments be carried out. She further requested that the former St. Louise Hospital facility be used as a health facility and no other use.

Chairman/Mayor Kennedy stated that it was his understanding that community members donated up to \$1 million for the hospital foundation when it was first built. The City Council, at that time, used its power of eminent domain to help acquire road access to the hospital.

Interim Executive Director/City Manager Tewes confirmed that at the time of construction of the hospital, individuals made contributions as part of a community fundraising campaign. He did not know what promises, if any, were made at the time in exchange for said contributions. He said that donated funds must be used for the purpose which they were donated. It was also his understanding that the city used its power of eminent domain to acquire lands for a public right of way.

Interim City Attorney/Agency Counsel Leichter stated that staff looked at the issue of what promises were made in return for the city exercising its power of eminent domain. She indicated that staff could not find, in the documents to date, any restrictions which limit the use of the property other than the zoning restriction in place. Unfortunately, donations given to St. Louise Hospital and the eminent domain were used without extracting a promise to retain the use as a hospital. She said that the city is still left with its power of zoning on the property for a hospital facility based on the PUD zoning.

Redevelopment Agency Action

CONSENT CALENDAR

Agency Member Cook requested that item 1 and Vice-chairman Sellers requested that item 2 be removed from the Consent Calendar.

Action: On a motion by Agency Member Tate and seconded by Vice-Chairman Sellers, the Agency

*Commission unanimously (5-0) **approved** Consent Calendar Item No. 3 as follows:*

3. AGREEMENT FOR ENVIRONMENTAL SERVICES RELATED TO THE MORGAN HILL SCHOOL SITE

***Action:** 1) **Authorized** the Interim Executive Director to Enter into a Revised Agreement for Environmental Services with the Firm of David Powers and Associates Increasing the Contract Amount to \$84,230; and 2) **Appropriated** \$20,704 from the Agency 317 Fund Balance (Redevelopment 80% monies) to Cover the Additional Cost for This Project.*

1. JANUARY FINANCE AND INVESTMENT REPORT

Agency Member Cook stated that she read through the January Finance and Investment Report for the RDA and noticed that \$17 million were transferred from the RDA funds into various city funds. She requested that staff explain why these transfers occurred during the month of January.

Interim Finance Director Reza said that the budget has the RDA transferring monies to various city funds in order to fund capital projects. She stated that the expenditures would be recorded out of the funds that are recorded in the city books.

Agency Member Cook stated that funds were placed into local drainage funds and public facility impact fee funds, noting that these funds were established for a specific purpose. These purposes are not the same as RDA monies being placed into a fund for public facilities as RDA funds are more restricted than impact fees. She stated that she was not comfortable with having the funds mixed together. She asked if there was an accounting system that would make the funds visible as the funds are being lumped into the public facilities impact funds.

Interim Executive Director Tewes responded that initially, funds are not lumped together. He noted that some projects are financed from multiple sources. He said that projects are named and specified in the Capital Improvement Programs' list.

Agency Member Cook asked if the Agency can draw down the money and the tax increment funding without having a contractual obligation with the party that receives the money?

Interim Executive Director Tewes stated the Agency/Council has directed staff to prepare: 1) a master implementation schedule of all of the projects on the Agency's visioning list, comparing this to the cash flows; and 2) to report to the Agency how the indebtedness will be accounted for now and into the future so that the Agency can claim the full amount of tax increments. He stated that a budget obligation can be considered indebtedness and that indebtedness does not have to be a contractual agreement under the law.

Agency Member Cook did not believe that the Agency has indebtedness because the city is under no obligation to build facilities for the RDA. She indicated that this is an issue that the Finance and Audit Committee will be working on. She stated that she was not convinced that the transfers were appropriate.

Interim Finance Director Reza identified the projects that have been approved by the Agency Commission

(e.g., storm drain, Little Llagas Flood Control, public facilities; community center, transit station, Measure C projects, streets, seal and overlay repair on roads, downtown plants and medians and Butterfield Boulevard).

Interim Executive Director Tewes informed the Agency that staff will cross reference the budgeted \$17 million to the pages in the budget, including the identification of old and new RDA projects in April 2000.

Agency Member Cook stated that she would be abstaining on this item as she would like to discuss her questions further with Interim Executive Director.

Action: *On a motion by Agency Member Tate and seconded by Vice-chairman Sellers, the Agency, on a 4-0-1 vote with Agency Member Cook abstaining, **Accepted and Filed** the Report.*

2. HOME IMPROVEMENT LOAN APPROVALS

Vice-chairman Sellers stated his support of the Home Improvement Loan Program. He inquired as to the need for these type of applications to come before the Agency.

Director of Business Assistance and Housing Services Toy said that in 1998, the project was reestablished. Staff felt that it would be appropriate to have the Agency approve a loan in the amount of \$20,000 or greater. Staff felt that once the program was up and running, staff would return to the Agency to request that staff be allowed to administratively approve loans up to a certain amount according to the guidelines if the Agency was supportive of this recommendation.

Agency Member Cook noticed that in all three requests that the loans and conditions were different and requested an explanation as to the reason that they were different. Mr. Toy stated that staff performs an underwriting analysis. Loans are tailored based on the applicant's ability to repay. In some situations, incomes are looked at to determine what can be repaid. Therefore, principal and/or interest are deferred on a case by case analysis following the program guidelines.

Action: *On a motion by Vice-chairman Sellers and seconded by Agency Member Tate, the Agency Commission unanimously (5-0): 1) **Approved** the Following Home Improvement Loans under the Agency's Housing Rehabilitation Loan Program: a) \$40,000 to Susan Lund, 725 Via Del Castille; b) \$30,000 to Deborah Vajretti, 334 Via Loma and c) \$40,000 to Kathleen Rhinehart, 100 Sanchez Drive; and 2) **Directed** the Interim Executive Director to Do Everything Necessary to Prepare and Execute the Loan Documents.*

OTHER BUSINESS:

4. AGREEMENT FOR ARCHITECTURAL SERVICES FOR THE COMMUNITY AND CULTURAL CENTER

Director of Community Development Bischoff presented the staff report.

Agency Member Tate stated that he did not understand the exclusion of the relocation of the church as Phase

I of the community center assumes that the church will be relocated.

Mr. Bischoff said that when this project began several months ago, there was an assumption that the church would be moved. However, it is not known who would be responsible for the design and the improvements for the church. He said that there has been some discussion about the possibility of the church relocating to a different piece of property and a different building. Once the church representatives agree to relocate their church, the city would need to decide the use of the existing building.

Agency Member Cook asked why the Agency did not go out to bid for this project? Mr. Bischoff responded that Agency directed staff to negotiate with VBN Architects.

Interim Agency Counsel Leichter clarified that the only issue that the Agency is agreeing to tonight is compensation for the project and the hiring of VBN Architects. The actual terms of the contract are still to be worked out between the City and the architect.

Chairman Kennedy asked if the cost has been negotiated as it appears to be high? Mr. Bischoff said that there will be further discussions regarding the contract amount. He said that the contract cost includes items that are not typically included in the scope of services. He felt that it would be appropriate to include additional discussions regarding the contract costs.

Interim Executive Director Tewes said that one issue that staff would like to discuss is the extent to which the architect would be providing contract management services in addition to the design. He would be recommending that the Agency retain an independent contract management firm to work as the Agency's representative in working with contractors and the architect and to provide periodic status reports to the Agency and the community as the project progresses. It is also hoped that the project manager would review requests for change orders and to keep the project on budget and on time. He would like to make sure that this opportunity is provided for in the overall budget and that there is clarity of the integration of the architecture with that of the contract management firm.

Chairman Kennedy stated that he would only support approving the action with the understanding that the contract amount is to be negotiated and that the action is to be viewed as a "not to exceed amount."

Agency Member Tate said that it was not clear whether the \$920,000 includes the money already paid out, noting that the construction management cost is not included in this amount. Mr. Bischoff clarified that the \$920,000 cost does not include monies previously paid out.

Franz Steiner, VBN Architects, stated that construction management firms cost 4-6% of the total construction cost to manage projects similar to this one. He said that he would like to discuss the use of a construction manager with the Agency and staff as it was his belief that he could save the Agency some money.

Chairman Kennedy felt that there may be some merit in utilizing a full time construction manager.

Mr. Steiner informed the Agency that his firm would conduct site visits as long as it does not require daily

appearances on the part of his staff. He said that his firm also offers full time site representation which takes the place of a construction manager at a lesser cost.

Chairman Kennedy opened the floor to public comment.

Carol Holzgrafe stated that she was not clear as to the uses that would be built as part of the project. She said that the project has always been referred to as a community and cultural center. If a banquet hall is to be included, will there be less space for art rooms and the other uses that individuals thought were going to be included in this project? She asked if the Granada Theater has been sold and if so, can it be used as an auditorium?

Director of Business Assistance and Housing Services Toy indicated that the owners of Cinema Six are talking to the owner of the Granada Theater to purchase the theater in order to maintain eight theaters in Morgan Hill.

Mr. Bischoff identified the uses as part of Phase I (the community center with the exception of the auditorium building). He said that there are any number of possibilities for the arts programming to occur within the center even if the auditorium was not included as part of Phase I.

Charles Weston, local architect, stated that he was surprised that the Agency was proceeding with the contract documents. He felt that parking for the community center was inadequate for the proposed uses. He recommended that the Agency return to a working forum so that everyone can agree to a schematic design. He felt that a multi purpose room would be an extravagance as a large amount of parking would be required to satisfy the multi purpose room. He did not believe that the Agency has completed the schematic design phase, much less reviewed the construction documents. He was surprised with the costs, reimbursables, and the hourly fees. He asked why the project was being processed so quickly? He recommended that the size of the overall project be reduced and that the remaining funds be placed in a maintenance account for future use.

No further comments were offered.

Chairman Kennedy felt that the parking concern would depend on what happens to the church and the auditorium. If the church selects a different location, it would address the parking concern. He asked if the Agency could defer the approval of the dollar amount this evening and ask the Executive Director to negotiate with the architect?

Interim Executive Director Tewes said that it was staff's objective to bring a contract before the Agency as soon as possible in order to begin the design work.

Vice-chairman Sellers stated that he would like to figure out a way to move forward with the process and to publicize the community center uses and the buildings being proposed (e.g., City Visions, Show Case Morgan Hill, etc.).

Chairman Kennedy recommended that staff put together a flier or brochure that talks about and explains who

would benefit from the uses proposed for the community center.

Agency Member Cook said that in order to derive income to support the community center, the banquet room will need to be rented out several days a week in order to recoup expenses. If this is the case, it will not be a facility that the community can use because it has to be run as a business in order to make money. It troubled her that the center is losing some of its community flavor. She noted that when the RDA extension was formulated, it was stated that all of the buildings would be self sufficient and not be a drain on the general fund. She noted that for the first two or three years, \$260,000 would need to be budgeted to keep the community center running.

Mr. Bischoff felt that the community and non profit groups have a need for a banquet facility and meeting rooms. He felt that a good portion of the 10,000 square feet of the Community Center would be used for various community events and by community organizations and not just used by businesses.

Chairman Kennedy felt that the community center would benefit the entire community. It is his hope that eventually, there will be a minimal subsidy to maintain the community center. He felt that a lot of the rooms can be used for a variety of programs. He stated his support of directing the Executive Director to negotiate an acceptable agreement and that said agreement return to the Agency for approval.

Agency Member Tate expressed concern with the cost of the contract. He recommended that there be a guarantee that the contract would be within a certain percentage of the overall budget. He stated that he wanted to see control so that it does not get out of hand in terms of the overall dollar amount being discussed.

Agency Member Chang noted that staff's recommendation is for a not to exceed amount. She recommended that the Agency authorize the Executive Director to negotiate a lower cost so that the contract does not need to return to the Agency. If the Executive Director feels that he can renegotiate and come up with a good contract at a not to exceed cost, it would be acceptable to her.

Chairman Kennedy asked staff if this item could return to the Agency on March 1? Mr. Tewes recommended that this item return to the Agency on March 15 in order to give staff the time to address the Agency's concerns.

Vice-chairman Sellers also expressed concern with the total cost. He asked if there would be a significant change in the overall cost? Mr. Tewes said that the overall cost was based on the early estimate on the schematic drawings based on square footage. The actual cost will come when the project is let out to bid. He felt that it was important for the Agency to have an independent construction management firm. He noted that the architect has suggested that there may be alternatives by enhancing the scope of the contract. He said that he would be interested in discussing these ideas.

Interim Agency Counsel Leichter informed the Agency Commission that the architect has proposed a standard American Institute of Architect's (AIA) contract that favors the architect's firm and does not contain the normal language that staff recommends be contained in a consultant's contract. Therefore, revisions will need to be made to the contract.

Agency Member Tate recommended that the \$920,000 amount be deleted and that it be replaced with a "not to exceed" statement.

Vice-chairman Sellers noted that the only delay would be in the final approval of the contract and not a delay in the process. He stated that he would support continuing this item to March 15.

Mr. Weston said that Agency Member Tate's concern could be addressed by the inclusion of a value analysis under Section 2.8.3.15. This would hold the architect responsible for his estimate to within 5-10% of the normal construction cost. If a construction manager is to be hired, he recommended that the Agency make sure that the construction manager has liability insurance for their work and that the construction manager is accountable for their actions.

No further comments were offered.

Mr. Bischoff said that staff has been proceeding with negotiations with Church representatives. The next step in the process is the design development that would take a couple of months to work through. He hopes that by the end of this process, staff will know whether or not the church property will be acquired. There may be some modifications necessary to the plans for this segment of the work at a cost of approximately \$25,000. He would not recommend going into construction drawings without having the church site issue resolved.

Action: *On a motion by Vice-chairman Sellers and seconded by Agency Member Tate, the Agency Commission, on a 4-0-1 vote with Agency Commissioner Cook abstaining, **Authorized** the Interim Executive Director to Modify, as Needed, and Execute a Contract with VBN Architects for Design Development and Construction Documents for the Community and Cultural Center at a Cost to be Negotiated, incorporating the comments made by the Agency Commission and members of the public. This item to return to the Agency on March 15, 2000.*

Interim Agency Counsel Leichter clarified that State Law and the Municipal Code allows the Agency to go out without bid. She said that some Agencies have a dollar limitation on contracts. If a contract exceeds the established dollar limitation, the contract goes out to bid, regardless of the type of contract. If the Council wants to establish a dollar limitation, it would require an amendment to the Municipal Code and the City's Purchasing Policy.

Chairman Kennedy stated that the VTA Board had a similar situation. He challenged them for not getting competitive bids for engineering work. He was told that State Law prevented them from competitively bidding and that they had to select a firm based on qualifications and not on price.

Interim Agency Counsel Leichter said that it was her belief that this may be a provision in state law that is peculiar to transportation projects to protect Caltran's engineering staff from being contracted out. She said that she would look into this issue.

Chairman Kennedy requested that staff look into this issue.

Agency Member Cook stated that she abstained on the motion because she felt that this project should go out to competitive bid as it is a significant contract.

Redevelopment Agency/City Council Action

Interim Agency Counsel/City Attorney Leichter announced the following closed session items:

CLOSED SESSION:

1.

CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION

Legal Authority: Government Code 54956.8 & 54956.9(c) (1 potential case)
Real Properties involved: APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of Mission View and Cochrane Road; and APN 728-31-009 - 12.88 acres located on the southeast corner of Cochrane and Highway 101 (St. Louise Hospital property)
City Negotiators: Mayor, City Council/Agency Members; Interim City Manager/Interim Executive Director; Interim City Attorney/Interim Agency Counsel; and F. Gale Conner, special counsel
Closed Session Topic: Potential Litigation

2.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Authority: Government Code Section 54956.8
Property: 17020 Depot Avenue; 2.05 acres (APN 726-13-048)
Negotiating Parties:
 For City: Mayor, City Council/Agency Members; Interim City Manager/Interim Executive Director, Interim City Attorney/Interim Agency Counsel, Director of Business Assistance and Housing Services, Director of Community Development
 For Property Owner: Southern Pacific Railroad Company
Under Negotiation: Price and Terms of Payment

3.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Authority: Government Code Section 54956.8
Property: APN 813-13-001; 37.8 acres
Negotiating Parties:
 For City: Mayor, City Council/Agency Members; Interim City Manager/Interim Executive Director, Interim City Attorney/Interim Agency Counsel, Director of Business Assistance and Housing Services, Director of Public Works
 For Property Owner: Tadashi & Alice A. Kadonaga, Trustee
Under Negotiation: Price and Terms of Payment

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Kennedy opened the closed session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor Kennedy adjourned the meeting to closed session at 8:25 p.m.

RECONVENE

Mayor Kennedy reconvened the meeting at 9:37 p.m.

CLOSED SESSION ANNOUNCEMENT

Interim City Attorney/Agency Counsel Leichter announced that no reportable action was taken on the above listed closed session items.

4. AGREEMENT FOR ARCHITECTURAL SERVICES FOR THE COMMUNITY AND CULTURAL CENTER (Continued)

Action: *On a motion by Agency Member Cook and seconded by Agency member Chang, the Agency unanimously (5-0) **agreed** to reopen discussion of agenda item 4.*

Interim Executive Director Tewes explained the reason for having the contract on tonight's agenda. He said that it is a goal to have a ground breaking ceremony for the Community Center within 120 days.

Chairman Kennedy asked when the land acquisition agreement will be finalized with the church representatives? Director of Business Assistance and Housing Services Toy informed the Agency that the appraisal will take five weeks to complete. Land acquisition can occur within two months if everything goes well and the City knows what the church representatives want.

Chairman Kennedy asked if the process could be expedited if an estimator was used? Mr. Toy responded that an estimate could provide staff with an estimate for the cost of a 4,000 square foot building.

Action: *Chairman Kennedy **directed** staff to schedule a closed session to discuss land acquisition (church property) for March 1, 2000.*

ADJOURNMENT: There being no further business, Mayor/Chairperson Kennedy adjourned the regular Redevelopment Agency and special City Council meeting at 9:45 p.m.

MINUTES RECORDED AND PREPARED BY:

Irma Torrez, City Clerk/Agency Secretary